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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 THE BILLING RESOURCE d/b/a INTEGRETTEL,
19 Debtor-Plaintiff-Appellee,

20 v.
21

22 FEDERAL TRADE COMMISSION et al.,
23 Defendant-Appellant.
24

No. 5:07-CIV-5758-JW

Date: February 4, 2008

Time: 9:00 a.m.

Place: 280 S. First Street

San Jose, CA

Judge: Hon. James Ware

Courtroom: 8 - 4th Floor

25 On Appeal from the United States Bankruptcy Court for the Northern District
26 of California, No. 07-52890, Adversary Proceeding No. 07-5156 (Weissbrodt)

27 **DEFENDANT-APPELLANT FEDERAL TRADE COMMISSION'S NOTICE OF**
28 **FURTHER DEVELOPMENTS CONCERNING THE FEBRUARY 4, 2008 HEARING**

1 Defendant-appellant the Federal Trade Commission (“Commission”) files this Notice to bring
2 to the Court’s attention four developments since the completion of briefing that the Commission
3 believes are relevant to the hearing before the Court scheduled for February 4, 2008.¹ The
4 Commission’s understanding is that this hearing will address: (1) the Commission’s Combined Motion
5 for a Stay of the bankruptcy court’s November 7, 2007, preliminary injunction and for a change of
6 venue pursuant to 28 U.S.C. § 1412 (Dkt Item 3); and (2) the Commission’s Motion for a Stay of the
7 bankruptcy court’s November 27, 2007, preliminary injunction (Dkt Item 13).
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9 The four developments are:
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11 **1. The Amended Complaint in the underlying Adversary Proceeding by**
12 **Debtor–plaintiff-appellee’s The Business Resource dba Integretel (“Integretel”)**

13 On December 27, 2007, Integretel amended its complaint in the underlying adversary
14 proceeding to seek a declaratory judgment that neither the Commission nor the Receiver appointed by
15 the United States District Court for the Southern District of Florida in a civil law enforcement action
16 against Integretel, *FTC v. Nationwide Connections, Inc.*, No. 06-CV-80180-Ryskamp/Vitunac (S.D.
17 Fla.) (the “Enforcement Action” in the “Florida District Court”), have any property interest in any
18 funds held by Integretel.² The Commission believes that entry of such a declaratory judgment by the
19 bankruptcy court would: (1) directly contradict (and effectively overturn) the Florida District Court’s
20 September 14, 2007, Order in the Enforcement Action holding that Integretel holds \$1,762,762.56 of
21 funds (the “Reserve Funds”) that are the property of the receivership estate in the Enforcement Action;
22 (2) violate the principle of collateral estoppel by ignoring the preclusive effect of the September 14
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26 ¹This Notice is supported by the Declaration of Michael Mora.

27 ²Integretel previously provided the Court with a copy of the amended complaint, Dkt
28 Item 57, Exh. D.

1 Order concerning the ownership of the Reserve Funds; and (3) undercut the contempt proceedings
2 against Integretel and the Florida District Court's September 21, 2007, order directing Integretel to
3 show cause why it should not be held in contempt for its failure to turn over the Reserve Funds to the
4 Receiver as required by prior orders entered by the Florida District Court in the Enforcement Action.
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6 The Commission respectfully submits that this amended complaint illustrates the necessity of
7 transferring the adversary proceeding to Florida District Court, the one court with the unique ability to
8 exercise jurisdiction over the interrelated issues (in particular the ownership of the Reserve Funds)
9 between Integretel's bankruptcy proceeding and the Enforcement Action. Absent such transfer, issues
10 relating to the Enforcement Action and the contempt proceeding relating to the Reserve Funds will
11 continue to be pending before this Court, the Florida District Court, the Eleventh Circuit, and the
12 bankruptcy court. By enacting 28 U.S.C. § 1412, presumably the Congress intended to facilitate the
13 elimination of what exactly is occurring here – simultaneous litigation of identical issues in multiple
14 federal courts. Transfer to the Florida District Court would promote judicial efficiency and prevent any
15 further inconsistent rulings concerning the ownership of the Reserve Funds.
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18 **2. The Commission's Motion to Withdraw the Reference of the Amended Complaint**
19 **in the Adversary Proceeding from the Bankruptcy Court**

20 Since the bankruptcy court's November 7 and 27, 2007, preliminary injunctions are both on
21 appeal before this Court, the only open issue in the adversary proceeding is the resolution of the
22 duplicative declaratory judgment action relating to the Reserve Funds that Integretel has added to its
23 complaint. On January 11, 2008, the Commission filed a motion to withdraw the reference of the
24 amended complaint in the adversary proceeding from the bankruptcy court. (Attached as Exh. A to
25 Decl. of Michael Mora). The motion was docketed in this District Court on January 18 as Case No. C-
26 08-00341-RMW. On January 22, the Honorable Judge Whyte issued an Order of Referral of that case
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1 to this Court, which is currently pending. Transfer of the adversary proceeding to the Florida District
2 Court would obviate the need for this Court to address the merits of the issue raised by the amended
3 complaint.
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5 **3. Integretel's First Interim Professional Fee Applications to the Bankruptcy Court**

6 On January 25, 2008, the array of professionals employed by Integretel (and the creditors
7 committee) in its bankruptcy case filed their first interim fee applications in the bankruptcy case,
8 totaling over \$3 million. Notice of Hearing, Bk. Ct. Docket Item 430. (Attached as Exh. B to Decl. of
9 Michael Mora). A large portion of the fees and expenses are attributable to Integretel's litigation and
10 relitigation of its disputes with the Commission and the Receiver in multiple federal courts. If these fee
11 petitions are granted, which is likely, and if Integretel continues to pursue duplicative litigation and
12 incur professional fees at this rate, these fees will significantly deplete the amount of funds otherwise
13 available for distribution to creditors and Integretel will likely liquidate, rather than reorganize.
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16 **4. Adversary Proceeding filed by Customers of Integretel's Billing Services**

17 On January 23, 2008, a group of plaintiffs (the "Voice Mail Plaintiffs"), all of whom had or
18 have contracts with Integretel to bill and collect charges from consumers through their local telephone
19 bills, commenced an adversary proceeding against Integretel. *Enhanced Long Distance, Inc. v. The*
20 *Billing Resource dba Integretel*, Adv. Pro. No. 08-05020 (Bankr. N.D. Cal.) (Complaint and
21 Application for Order to Segregate Funds attached as Exh. C and D to Decl. of Michael Mora). The
22 Voice Mail Plaintiffs claim that Integretel holds approximately \$5 million of reserve funds that are the
23 property of the Voice Mail Plaintiffs and not Integretel. The Voice Mail Plaintiffs seek to have the
24 bankruptcy court enter a temporary restraining order and preliminary injunction placing \$5 million into
25 a frozen segregated account subject to the control of the bankruptcy court, much as the bankruptcy
26 court has done for the Reserve Funds claimed by the Receiver in the Enforcement Action. If the Voice
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1 Mail Plaintiffs obtain this relief, it may significantly deplete the amount of funds otherwise available
2 for distribution to creditors and Integretel will likely liquidate, rather than reorganize.
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4
5 Respectfully submitted,

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7 General Counsel

8 JOHN F. DALY
9 Deputy General Counsel - Litigation

10 /s/

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